Tronsen v. Toledo-Lucas County Public Library Doc. 13

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANDERS TRONSEN,	*	Case No. 3:08-CV-148
Plaintiff	*	JUDGE CARR
	*	
vs.	*	DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION
	*	
TOLEDO-LUCAS COUNTY PUBLIC LIBRARY	*	
Defendants	*	Julia R. Bates Lucas County Prosecuting Attorney By: John A. Borell (0016461) Karlene D. Henderson(0076083) Assistant Prosecuting Attorneys Lucas County Courthouse, Suite 250 Toledo, Ohio 43624 Phone: (419) 213-2001 Fax: (419) 213-2011 E-mail: JABorell@co.lucas.oh.us Counsel for Defendant

I. STATEMENT OF THE CASE

On January 17, 2008, the plaintiff filed a pro se complaint alleging a violation of the First Amendment rights of free speech and expression. The plaintiff also sought a temporary restraining order allowing him access to the public library during the pendency of this action. On January 22, 2008, this Court

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denied the plaintiff's motion for a temporary restraining order.

The plaintiff then filed "Writ of Prejudice" seeking removal of the trial judge from the case. On February 26, 2008, this Court denied the plaintiff's request.

On March 7, 2008, the plaintiff filed a motion a motion for reconsideration of this Court's February 26, 2008 Order. As will be established below, the plaintiff's motion does not address the defects of the 'writ of prejudice' and is completely irrelevant to any of the issues discussed in the Court's February 26, 2008 Order.

Therefore, the plaintiff's motion for reconsideration must be denied.

II. LAW AND ARGUMENT

When a party files a ***sufficient*** affidavit that a judge has a personal bias, such judge shall proceed no further, but another judge shall be assigned to hear such proceeding. 28 *U.S.C.* §144. The threshold procedural requirements of §144 are ***not*** to be liberally construed. *In re Martin-Trigona*, 573 S.Supp. 1237(D. Conn. 1983), *cert. denied*, 475 U.S. 1058(1986). Strict construction is necessary to safeguard the judiciary from frivolous attacks upon its dignity and integrity and to prevent abuse. *Rademacher v.Phoenix*, 442 F.Supp. 27(D.C. Ariz. 1977).

Recusal is required only for actual bias. *Walberg v. Israel*, 766 1071, *cert. denied*, 474 U.S. 1013(1985). The purpose of §§144 is not to aid discontented litigants who seek to oust a judge because he is displeased with the actions of the judge. *Creder v. Koehane*, 484 F.Supp. 11(W.D. Okla. 1979). Thus, bias cannot be inferred from a mere pattern of adverse rulings, but requires evidence that the judge had it "in" for the party for reasons unrelated to the judge's view of the law, even if it is erroneous. *Scott v. Metropolitan Health Corp.*, 234 Fed. Appx. 341(6th Cir. 2007).

In the present case, the plaintiff's "writ of prejudice" requested recusal based solely on the following assertions: (1) at the January 22, 2008 TRO hearing, the Court made one or more statements of fact that were not supported by evidence in the case and (2) the factual determination made by the Court was presumptive and prejudices the determination of the matter, since there has not yet been a trial.

These allegations and the manner in which they were asserted did not comply with §144. As this Court held, the plaintiff filed a "writ of prejudice" rather then an affidavit as required by 28 *U.S.C.* §144. As note previously, the threshold procedural requirements of §144 are ***not*** to be liberally construed. The plaintiff has failed to comply with this initial statutory requirement and therefore, his request was correctly denied by this Court.

In addition, the plaintiff has failed to base his allegations on matters *outside and apart from the litigation*. His allegations of bias and prejudice are based solely on the Court's actions in this case. Such allegations were not sufficient to establish bias and prejudice.

The plaintiff's motion for reconsideration fails to address any of these procedural defects. Rather, the motion consists merely of a disjointed and meaningless "analysis" of cases that are and completely irrelevant to issue presented by a request under 28 *U.S.C.* §144.

Therefore, the plaintiff's motion for reconsideration must be denied.

Respectfully submitted

JULIA R. BATES
LUCAS COUNTY PROSECUTING ATTORNEY

By: /s/ John A. Borell
John A. Borell
Karlene D. Henderson
Assistant Prosecuting Attorneys
Counsel for Defendant

CERTIFICATION

A copy of the foregoing Memorandum in Opposition was sent by email the plaintiff on the 8th day of March 2008.

/s/ John A. Borell
John A. Borell
Assistant Prosecuting Attorney
Counsel for Defendant